

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

DECISION

March 15, 1990

In Reply, Please Refer To:

Docket No. 90-01-03:TE:PAP

Peter J. Tyrrell, Esquire
William J. O'Keefe, Esquire
SNET Cellular Inc.
555 Long Wharf Drive
New Haven, CT 06511

Re: Docket No. 90-01-03, SNET Cellular Inc., to Change Tariff Name from
SNET Cellular, Inc., to the Springwiche Cellular Limited Partnership

Dear Messrs. Tyrrell and O'Keefe:

The Department of Public Utility Control ("Department") is in receipt of SNET Cellular Inc.'s ("SCI" or "Company") letters dated August 11, 1989, September 26, 1989, October 12, 1989, October 31, 1989, and January 3, 1990, requesting a name change in its tariffs. Specifically, SCI is requesting the Department's approval to change the name in its tariffs to Springwiche Cellular Limited Partnership ("Springwiche").

At a special meeting held on March 15, 1990, a panel of three of the Department's five commissioners who constitute the Public Utilities Control Authority ("Authority") considered this matter. The Authority notes that SCI is both a general and limited partner in the Springwiche Partnership. Other limited partners in the Springwiche Partnership are the Woodbury Telephone Company, Granby Telephone Company, Nynex Mobile Communications Inc., and the New York SMSA Limited Partnership. The Company states that the instant proposal is similar in kind and scope to a previous name change in its tariffs from the Southern New England Telephone Company ("SNETCO") to SCI.

The Authority has reviewed the Company's proposal and has determined that, while the Department previously has approved a similar tariff change involving SNETCO and SCI, the underlying circumstances in the instant proposal are of a different nature. The Company's initial tariff name change from SNETCO to SCI resulted from a Department Order, with the formation of the Southern New England Telecommunications Corporation ("SNET"). In the instant case, the name change is the result of a partnership agreement entered into by entities other than the affiliates of SNET. Consequently, further Department review and investigation of each of the limited partners that comprise the Springwiche Partnership is warranted.

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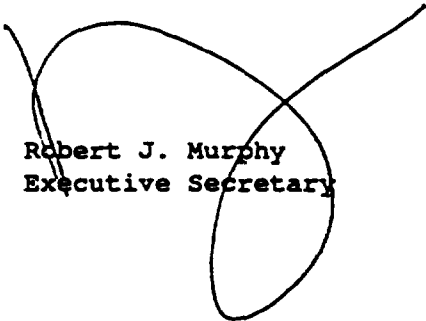
Docket No. 90-01-03
March 14, 1990
Page 2

Therefore, Springwich as the new bulk wholesale cellular provider, is directed to submit to the Department an "initial application" pursuant to Section 16-250b-4 of the Regulations of Connecticut State Agencies for its review. Springwich should submit its application to the Department no later than April 16, 1990.

In order to facilitate the Springwich Partnership's provision of cellular service in Connecticut, the Authority approves the proposed tariffs on an interim basis until the Department completes its investigation.

Very truly yours,

DEPARTMENT OF PUBLIC UTILITY CONTROL



Robert J. Murphy
Executive Secretary

cc: Service List

RJM:PAP:gcr



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

DOCKET NO. 90-08-03

APPLICATION OF
SPRINGWICH CELLULAR LTD. PARTNERSHIP
FOR A DECLARATORY RULING
RE: FORBEARANCE FROM REGULATION OF RATES OF
CELLULAR TELEPHONE MOBILE TELEPHONE SERVICE

DECISION

SEPTEMBER 25, 1991

RECEIVED
DATE 10/10/91
SNET LEGAL DEPT

DECISION

I. INTRODUCTION

A. Background of the Proceeding

On August 1, 1990, The Springwich Cellular Limited Partnership ("Company") requested that the Department of Public Utility Control ("Department") issue a declaratory ruling to the cellular industry in Connecticut with regard to forbearance from regulation of rates of cellular telephone mobile telephone service. Specifically, the Company requested a ruling that conditions specified in § 16-250b-2(a) of the Regulations of Connecticut State Agencies ("Conn. Agencies Regs.") have been met and that rate regulation should no longer apply to cellular service in Connecticut.

B. Conduct of the Proceeding

In accordance with § 16-2(c) of the General Statutes of Connecticut, the docket was assigned to a panel of three of the Department's five commissioners, who constitute the Public Utilities Control Authority ("Authority").

Pursuant to a Notice of Hearing dated February 8, 1991, and a Notice of Rescheduled Hearing dated March 20, 1991, a public hearing was held on this matter at the Department's offices, on April 25 and closed on June 4, 1991.

The Authority issued its Draft Decision in this docket on August 26, 1991, with written exceptions on the draft due to the Department by September 9, 1991. Additionally, oral arguments were conducted on September 11, 1991. All parties and intervenors to this proceeding were given the opportunity to file written exceptions to the proposed Decision with the Department and offer oral arguments.

C. Parties and Intervenors

The Department recognized Springwich Cellular Limited Partnership/SNET Cellular ("Springwich"), 227 Church Street, New Haven, Connecticut, 06506, Metro Mobile CTS, Inc. ("Metro Mobile"), 482 Pigeon Hill Road, Windsor, Connecticut, 06095; and the Office of Consumer Counsel, 136 Main Street, Suite 501, New Britain, Connecticut, 06051, as Parties to the proceeding. Cellular Service Bureau/Message Center Cellular, Inc., 40 Woodland Street, Hartford, Connecticut, 06105, and Nationwide Cellular Service, Inc., (collectively referred to as the "Cellular Resellers"), were designated as intervenors to this proceeding.

II. POSITIONS OF PARTIES AND INTERVENORS

A. The Springwich Cellular Limited Partnership

In its brief, Springwich stated the following:

1. The record in this matter demonstrates that all of the regulatory criteria to permit forbearance from rate regulation have been met, and in most instances exceeded.
2. The evidence admitted in this docket has shown that the Connecticut wholesale cellular market is prepared and ready for the Department to forbear from rate regulation as fostering the public interest.
3. Under regulation, the carriers have achieved a degree of competition.
4. Forbearance would substitute full competition for regulated competition.

B. Metro Mobile CTS, Inc.

In its brief, Metro Mobile provided the following positions:

1. Springwich's petition for deregulation of wholesale cellular telephone service rates should be denied.
2. Deregulation of wholesale cellular service rates by the Department is discretionary.
3. Springwich's petition for deregulation is premature.
4. Competition is best preserved by refraining from deregulation at this time.

C. The Office of Consumer Counsel

In lieu of a brief, the OCC stated in a letter dated July 8, 1991, that it neither favors nor opposes the Department's forbearance of rate regulation. According to the OCC, review of the applicable statutes, regulations, and the record of the instant proceeding indicates that the "abuses outlined in the controlling legislative and administrative guidelines, which would prohibit forbearance, are not in evidence in Connecticut at this time." However, given that the offering of wholesale cellular service constitutes a duopoly, the OCC states it is concerned that the provision of such, if unregulated, may be subject to monopoly-like abuses. Consequently, the OCC endorses whatever level of regulation is deemed necessary to protect the recipients of the services at issue in the absence of marketplace competitive protections.

D. Cellular Service Bureau/Message Center Cellular, Inc., and Nationwide Cellular, Inc.

In its brief, the Cellular Resellers stated the following:

1. Springwiche has not demonstrated compliance with regulatory requirements for forbearance from rate regulation.
2. Even if the Department determines that the regulations permitting forbearance have been met, it should exercise its discretion and not grant such forbearance.
3. Springwiche has not demonstrated any harm from the current level of regulation.
4. The Springwiche petition should be denied.

III. AUTHORITY ANALYSIS

A. Introduction

Section 16-250b-2 of the Conn. Agencies Regs. establishes the minimum conditions that must be satisfied before the Department may forbear from regulating the rates for cellular telephone service. In particular, Conn. Agencies Regs., § 16-250b-2(a) states:

The Department shall continue to regulate carriers, by each New England County Metropolitan Area (NECMA) as defined by the Federal Communications Commission, for eighteen months after two carriers begin to offer service in the NECMA. At the end of this eighteen-month period, the Department shall conduct a public hearing to determine whether to forbear from regulating the rates for cellular mobile telephone service in the NECMA and shall issue a decision thereon. The Department may forbear from regulating the rates for cellular mobile telephone service in any NECMA when either of the following conditions in subdivisions (1) or (2) prevails at the same time that the conditions in subdivisions (3) and (4) prevail:

- (1) two or more carriers are licensed or permitted to provide service, and are offering service in the NECMA, or

- (2) service reasonably comparable in technology, price, and quality of service to cellular mobile telephone service is available generally in the NECMA;
- (3) no abusive practices are being undertaken by carriers, including, but not limited to, predatory pricing and discriminatory pricing to subscribers,
- (4) the standards in section 3 have been met, and the Department is reasonably assured that those standards will continue to be met by carriers and their service if the Department forbears from regulating rates in the NECMA.

In addition, § 16-250b-3, of the Conn. Agencies Regs. establishes the following standards, under which the Department regulates the rates and charges, services, accounting practices, safety and conduct of operations of the bulk wholesale cellular carriers:

- (a) that the public convenience, necessity and welfare are protected;
- (b) that the service is provided adequately, efficiently, and safely;
- (c) that rates and charges reasonably reflect prudent costs and market conditions;
- (d) that the technology is allowed to develop to benefit the public interest;
- (e) that no abusive practices are undertaken by any carrier, including but not limited to, predatory pricing and discriminatory pricing to subscribers;
- (f) that sufficient capacity for cellular mobile telephone service is provided, and
- (g) that cellular mobile telephone service is provided without unreasonable discrimination and that competitive service is made available generally.

The Federal Communications Commission ("FCC") has, for purposes of providing cellular service, divided the State of Connecticut into six cellular service areas, four of which are coincident with the New England County Metropolitan Area boundaries ("NECMAs") and two rural service areas ("RSAs"). The four NECMAs are identified as the Bridgeport, Connecticut NECMA which comprises Fairfield County; the Hartford, Connecticut NECMA which includes Hartford, Middlesex and Tolland Counties; the New Haven, Connecticut NECMA; and, the New London, Connecticut NECMA. The RSAs are Litchfield, Connecticut comprising Litchfield County and the Windham, Connecticut RSA which comprises Windham County.

B. Conn. Agencies Regs. Section 16-250b-2

Section 16-250b-2 of the Conn. Agencies Regs. states that the Department "may forbear" from rate regulation when two or more carriers are providing service, and are offering service in the NECMA, or service reasonably comparable in technology, price, and quality to cellular mobile telephone service is available in the NECMA. At the same time, there must be no abusive practices being undertaken by the cellular carriers, including, but not limited to, predatory and discriminatory pricing. In addition, the standards in Conn. Agencies Regs. §16-250b-3 have been satisfied; and the Department must be reasonably assured that those standards will continue to be met by carriers and their service if the Department forbears from regulating rates in the NECMA.

The offering of bulk wholesale cellular service has been authorized in Connecticut since 1985, when Springwich's predecessor, Sonecor Cellular requested to provide such service and was authorized by the Department's January 16, 1985, Decision in Docket No. 84-08-16, Southern New England Telephone Company Tariff Filing to Provide Bulk Domestic Cellular Radio Telecommunications Service. Metro Mobile's request to provide bulk wholesale cellular service was approved by the Department in its June 2, 1987, Decision in Docket No. 86-09-04, Application of Metro Mobile CTS, Inc., for Approval of Wholesale Cellular Mobile Telephone Service Tariff.

Pursuant to these Decisions, Springwich and Metro Mobile have been providing bulk cellular service in each Connecticut NECMA as indicated below:

<u>NECMA</u>	<u>Springwich Date Service Began</u>	<u>Metro Mobile Date Service Began</u>
Hartford	January 31, 1985	October 16, 1987
New Haven	March 15, 1985	November 20, 1987
Bridgeport	March 15, 1985	November 20, 1987
New London	May 29, 1987	June 21, 1988

(Springwich response to Interrogatory TE-1; Metro Mobile response to Interrogatory TE-1)

As noted above, the two bulk wholesale cellular carriers have been providing service in each NECMA for a period of time that exceeds the 18 months as required by Conn. Agencies Regs., §§ 16-250b-2(a), and 16-250b-2(a)(1). Consequently, the requirement to make a determination that "service reasonably comparable..." pursuant to Conn. Agencies Regs. §16-250b-2(a)(2) is moot.

Regarding §16-250b-2(a)(3) of the Conn. Agencies Regs., both Springwich and Metro Mobile have testified that they have no knowledge of any abusive practices including predatory pricing, occurring. (Springwich response to TE-11e; Metro Mobile response to TE-11e). Additionally, the Authority notes that bulk wholesale cellular service is provided pursuant to tariff in an equitable and nondiscriminatory manner. The Authority further notes that the record does not indicate any abusive practices are occurring. Consequently, the Authority finds that §16-250b-2(a)(3) of the Conn. Agencies Regs. has been satisfied.

However, the Cellular Resellers claim that two abusive practices have been occurring; in particular, the provision of non-cost based, high volume discounts and the bundling of equipment with purchases of service (Brief, p.3). The Authority notes that the issue of volume discounts was raised in Docket No. 87-10-23, SNET Cellular Inc.'s Proposed Revision to its Tariffs. In the March 30, 1988, Decision in that Docket, the Authority determined that the volume discount schedule was equitable and nondiscriminatory. In addition, the Authority stated that it did not believe that the volume discount schedule prevented resellers from accruing equal discount rates for equal levels of service subscription. (Docket No. 87-10-23 Decision, p.16) In the instant proceeding, the Authority finds that the cellular carriers have not changed their pricing structures nor have the cellular resellers provided any evidence that application of the volume discounts have been provided on a discriminatory basis.

Regarding the Cellular Resellers' claim of bundling of equipment purchases with purchases of service, the Authority notes that the instant proceeding was convened to address forbearance of rate regulation in the wholesale cellular market. The Authority believes that the issue of bundling of equipment with service involves the provision of retail cellular service and is outside the scope of this proceeding.

As noted above, § 16-250b-2(a)(4) of the Conn. Agencies Regs. requires that the standards listed in §16-250b-3 of the Conn. Agencies Regs. be satisfied and considered by the Department when making its determination to forbear from rate regulation. These standards pertain to the rates and charges, services, accounting practices, safety and conduct of operations of the cellular carriers, and have been provided in Section III, A., supra.

In separate responses to the Department's interrogatory TE-11a-g, Springwich and Metro Mobile indicate that these standards have been reasonably satisfied. For example, both carriers provide service on a 24-hour basis and provide free E-911 calling. Additionally, the record indicates that the provision of service is adequate and efficient as shown by the minimal number of service outages and the fact that no accidents have occurred since service was first introduced in 1985.

In addition, the Authority believes that the cellular service rates and charges reflect prudent costs and market conditions, as each carrier's respective tariffs have been based on the results of long run incremental analysis ("LRIA") studies. The Authority has accepted this type of study in several dockets including Dockets No. 84-08-16, 86-09-04 and 87-10-23. Metro Mobile states that a recent change to its tariff, a reduction in its minimum usage requirements from 120 to 75 minutes, has been in response to present customer calling characteristics, a reflection of current market conditions.

The Authority also finds that the provision of cellular service has been permitted to develop and benefit the public interest as evidenced by the increase in the number of cell sites required to accommodate an expansion in network service coverage. Additionally, both carriers have indicated their commitment to move towards a digitalized cellular system at the appropriate time. Accordingly, the Authority believes that the cellular carriers have satisfied those standards pertaining to the development of cellular technology and provided a sufficient degree of capacity.

Lastly, Conn. Agencies Regs. § 16-250b-3 prohibits predatory and discriminating pricing practices and requires that cellular service be provided without unreasonable discrimination and competitive service be made available generally. As noted above, the Authority finds that there is no evidence of abusive or discriminatory pricing practices. In addition, since Metro Mobile's entry into the Connecticut market, the Authority believes that competition in cellular service has begun to mature as evidenced by Springwich's request to restructure its rates and charges in Docket No. 87-10-23, as well as specific changes to effective rates by the carriers, and the number of service promotions offered since 1988.

Therefore, based on the above, the Authority has determined that the terms and conditions contained within §§ 16-250b-2 and 16-250b-3 of the Conn. Agencies Regs. have been satisfied.

C. Forbearance from Rate Regulation

Conn. Agencies Regs. §16-250b-2(a) provides the Department with the ability to forbear from rate regulation, at its discretion. The Authority notes that only Springwich is in favor of forbearance, with Metro Mobile and the Cellular Resellers generally opposed. The OCC neither favors nor opposes forbearance, but endorses whatever level of regulation is necessary to protect the recipients of the service.

Springwich, while acknowledging that the regulatory process relative to the provision of bulk wholesale cellular service "has been aptly managed," states that it "contains inherent limitations on the ability to be competitive." (Brief, p. 19) Springwich cites as an example, the delay in providing new services. In particular, Springwich cites Docket No. 88-07-11, Application of SNET Cellular Inc. For Approval of Tariff Re: Public Cellular Radio Emergency Service, when it proposed to offer Cellular Radio Emergency Service to the State of Connecticut, Department of Transportation ("DOT"). According to Springwich, the time that the regulatory process took from commencing a trial of this service, to the Department's issuance of a Decision was nine months. Springwich indicates that the Department's action was expeditious, but the nine month time period involved a movement from one fiscal year to another, resulting in a reduction to the DOT's budget and a concomitant loss in funds and market opportunity.

An additional example offered by Springwich has been characterized as abuses of the regulatory process by cellular service resellers, who have protested the carrier's changes to its wholesale rate structure in Docket No. 87-10-23 and at the Connecticut Siting Council. (Hausman Testimony, pp. 6 and 10) Lastly, Springwich cites as a limitation to competition, the requirement that the cellular carriers provide 30 days advance notice to the Department of any new tariff or other promotional changes.

Relative to the delay in providing Cellular Radio Emergency Service, the Authority notes that while the Department's regulatory review spanned approximately four months, the remainder of the time was required by Springwich to prepare its tariff filing. However, the Authority questions Springwich's belief that it would not have been subject to the same regulatory process absent formal rate regulation by the Department. The Authority notes that Conn. Agencies Regs. §16-250b-2(d) require the Department to "continue to regulate the services ..." in the absence of rate regulation. Consequently, the Authority does not believe Springwich's example relating to Emergency Service to be appropriate since any new service request would be subject to the Department's review and scrutiny. Indeed, the Authority believes that

some preparation by the company is necessary in its offering of new services. Additionally, the Authority notes that the typical Departmental review period for new telecommunications services is 30 days. Further, as discussed below, this 30 day review period is consistent with the amount of time afforded to noncellular competitive telecommunications service providers.

The Authority has also reviewed Springwich's claim of regulatory abuse by resellers and competitors and finds it to be inapplicable and of little or no impact on the regulatory process. In particular, the Authority notes that one example of regulatory abuse cited a reseller's objection that was filed with the Connecticut Siting Council. Clearly this objection was outside the Department's jurisdiction, and consequently the Authority fails to see the relevance of such to this proceeding. Regarding the cellular resellers' objection to the then SNET Cellular Inc., proposed rate restructuring, the Authority notes that the Department received this objection during its review of SNET Cellular's request in Docket No. 87-10-23. This objection was appropriately addressed in that proceeding and did not unduly delay issuance of the Decision in that docket, nor did it result in any change to SNET Cellular's proposal to restructure its service rates and charges.

Springwich also states that the regulatory process limits competition through the Department's requirement that the cellular carriers provide 30 days advance notice of any change in effective rates or the carrier's intention to conduct a promotion. The Authority notes that this same requirement is imposed on the Southern New England Telephone Company for those services employing flexible rates, and the interexchange common carriers authorized to provide competitive telecommunications services within the State of Connecticut. In the Authority's opinion, this requirement is consistently applied to all telecommunications service providers in an emerging competitive environment, is equitable and not unduly burdensome. Therefore, based on the above, the Authority finds Springwich's contention that the current regulatory process inhibits the competitive service market to be unsupported by the facts and information on the record.

In its written exceptions to the Draft Decision in this case at page 2, Springwich raised a new issue that requires clarification by the Department. Springwich attempts to find an abuse of the regulatory process when, in a separate Department Docket, one of Springwich's partners imprudently released, and therefore made public, information relating to SNET Mobilecom, Inc. The Department took every means available to alleviate the consequences of this action, which was in no way caused by the Department or staff. However, Springwich now contends that this is an abuse of the regulatory process merely

because their mistake took place during the course of a regulatory proceeding. Without belaboring this issue, the Authority simply states that it finds Springwiche's position patently unjustified.

Finally, during the hearings, the witnesses for Springwiche and Metro Mobile were asked what benefits forbearance from rate regulation would bring to Connecticut users. The witnesses for each cellular carrier were unable to provide specific examples. In addition, the Springwiche witness testified that it did not have plans at the present time to make any major changes. (Tr. 4/25/91, p. 78)

The Authority notes that only Springwiche is in favor of the Department's forbearance from rate regulation. Metro Mobile, one of the two parties that would be most affected by the Authority's decision to forbear, states that the Department has not imposed extensive or burdensome rate regulation on the cellular carriers. Metro Mobile also states that the state of competition is best preserved by refraining from deregulation at this time. (Brief, p. 5) Indeed, Metro Mobile, noting Springwiche's affiliation with the Southern New England Telephone Company, states that the "Department should not at this time give Springwiche an additional advantage by removing regulations which have allowed competition to flourish." (Reply Brief, p.2) In addition, the Cellular Resellers state that Springwiche has not demonstrated any harm from the current level of regulation. (Brief, p. 10) Both Metro Mobile and the Cellular Resellers have indicated that the Department's present regulatory oversight should continue, and Springwiche's petition be denied.

The Authority finds Metro Mobile's statement favoring continuation of rate regulation to be worthy of strong consideration. Under the Department's regulation, the provision of bulk wholesale cellular service as well as competition in the Connecticut market has flourished in the NECMAs in which the 2 carriers have been operating for some time. At the same time, the overall cost of cellular service incurred by the carriers as indicated by the respective companies' LRIA studies, as well as the rates and charges for such, have decreased. During this proceeding, in the opinion of the Authority, Springwiche was unable to provide substantive evidence that the current level of regulatory oversight employed by the Department adversely affected the provision of cellular service in Connecticut. Additionally, during the this time period, the number of subscribers and cellular telephone numbers subscribed to have increased. Springwiche also did not provide evidence that substantial or further development of the Connecticut market would continue absent rate regulation. Lastly, Springwiche has not provided tangible evidence that retail subscribers and ultimately, end users, would be better off should the Department forbear from rate regulation.

Finally, the promulgation of Conn. Agencies Regs. §16-250b-1 through §16-250b-5 apparently preceded the FCC's definition of RSA boundaries (in Connecticut, Litchfield and Windham Counties). Springwiche has been authorized by the Department to provide wholesale cellular service in the RSAs, while applications by the nonwireline carriers selected and certified by the FCC are currently pending before the Department (See Docket No. 91-07-11, Application of Metro Mobile for Revised Tariff to Add Windham County RSA (CT-2)). Consequently, the Authority believes that because Connecticut is a geographically small state, the public interest would be best served by maintaining the current level of regulatory oversight over wholesale cellular service until competition is fully developed in the two emerging duopolistic markets in the State.

Based on the above, the Authority does not believe that at the present time forbearance from rate regulation will further enhance or expedite the competitive evolution of the cellular market. Instead, the Authority believes that continuing rate regulation will provide cellular service competition with the opportunity needed to develop in the Connecticut market. Therefore, the current level of regulatory oversight should continue. Accordingly, the Authority hereby denies Springwiche's request to forbear from rate regulation.

IV. FINDINGS OF FACT

1. The two bulk wholesale cellular carriers have been providing service in each NECMA for a period of time that exceeds the 18 months as required by Conn. Agencies Regs., §§ 16-250b-2(a), and 16-250b-2(a)(1).
2. The requirement to make a determination that service reasonably comparable in technology, price, and quality of service to cellular mobile telephone service is available generally in the NECMA pursuant to Conn. Agencies Regs. §16-250b-2(a)(2) is moot.
3. The bulk wholesale cellular service providers are not pricing service in an abusive or nondiscriminatory manner. The pricing of bulk wholesale cellular service, is made pursuant to tariff in an equitable manner.
4. The provision of cellular service has been adequate and efficient.

5. Cellular service rates and charges reflect prudent costs and market conditions, as each carrier's respective tariffs have been based on the results of long run incremental analysis studies.
6. The cellular carriers have satisfied those standards pertaining to the development of cellular technology and provided a sufficient degree of capacity.
7. The terms and conditions contained within §§ 16-250b-2 and 16-250b-3 of the Conn. Agencies Regs. have been satisfied.
8. Springwich's contention that the current regulatory process inhibits the competitive service market is not supported by the record.
9. Under the Department's regulation, the provision of bulk wholesale cellular service as well as competition in the Connecticut market has flourished.
10. Forbearance from rate regulation will not further enhance or expedite the competitive evolution of the cellular market.
11. The current level of regulatory oversight exercised by the Department should continue.

V. CONCLUSION

The requirements of Sections 16-250b-2 and 16-250b-3 of the Conn. Agencies Regs. have been satisfied. Additionally, under the Department's regulatory oversight, the competitive provision of bulk wholesale cellular service in the Connecticut marketplace has developed significantly. However, the record does not indicate that forbearance from rate regulation will further enhance or expedite the competitive evolution of the cellular market. Accordingly, Springwich's request is denied.

We hereby direct that notice of the foregoing be given by the Executive Secretary of this Department by forwarding true and correct copies of this document to parties in interest, and due return make.

Dated at New Britain, Connecticut, this 25th day of September, 1991.

Evan W. Woollacott }

Michael J. Kenney } DEPARTMENT OF PUBLIC UTILITY CONTROL

Richard G. Patterson }

State of Connecticut }

County of Hartford }

ss. New Britain, September 25, 1991

I hereby certify that the foregoing is a true and correct copy of Decision, issued by the Department of Public Utility Control, State of Connecticut.

CERTIFICATE OF SERVICE

I further certify that where a date is inserted by the Department in the "Date Mailed" box below, a copy of the Decision was forwarded by Certified mail to all parties of record in this proceeding on the date indicated.

Date Mailed:

OCT 8 - 1991

Attest:


Robert J. Murphy
Executive Secretary
Department of Public Utility Control



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

DECISION

DOCKET NO. 90-08-03

**APPLICATION OF SPRINGWICH
CELLULAR LTD. PARTNERSHIP FOR A DECLARATORY
RULING FORBEARANCE FROM REGULATION OF RATES
OF CELLULAR TELEPHONE MOBILE TELEPHONE SERVICE
REOPENED DOCKET**

MOTION TO WITHDRAW APPLICATION

The Department of Public Utility Control (Department) received the November 5, 1992, Motion to Reopen filed by Metro Mobile of Fairfield County Inc., Metro Mobile CTS of Hartford, Inc., Metro Mobile CTS of New Haven, Inc., Metro Mobile of New London, Inc. and Metro Mobile CTS of Windham, Inc. (collectively, Metro Mobile) requesting that the Department reopen the instant docket to reconsider the Department's forbearance from regulating cellular rates. Springwich Cellular Limited Partnership (Springwich) has been designated as a necessary party in this matter. In addition, Connecticut Telephone Communications Systems, Inc.; Connecticut MobileCom, Inc.; Message Center Cellular, Inc.; Cellular Service Bureau; Message Technologies, Inc.; Escotel Cellular; Inc. Esco PCN Telecommunications, Inc.; Phone Extension, Inc.; and Smart Cellular, Inc., (collectively Resellers) have been designated as intervenors. The Office of Consumer Counsel (OCC) and the Office of the Attorney General (AG) have also been designated as a party and intervenor respectively. Several rounds of discovery have been conducted in this matter.

On September 27, 1993, Metro Mobile filed its Request to Withdraw its request to reopen the instant docket, Springwich has concurred with Metro Mobile's request to withdraw. The Resellers the OCC and the AG have opposed the withdrawal of the petition and have further argued that if the Department accepts the withdrawal, it should establish a new docket to fully investigate the current market conditions and the status of competition.

In its request to reopen this docket, Metro Mobile argued that unlike Springwich's initial request for deregulation in 1990, cellular rates should now be deregulated because effective competition for the benefit of the consumer has finally been

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achieved. Motion to Reopen, November 5, 1992 p. 2. The Resellers have repeatedly objected to deregulation and have alleged that the current market conditions do not protect consumers. Several requests for extensions of time to file testimony and interrogatories as well as requests to postpone hearings have occurred throughout this proceeding.

Metro Mobile has now requested that it be permitted to withdraw its request for deregulation stating the new "federal legislation ... renders moot the ruling sought by Metro Mobile when it petitioned to reopen." Request to Withdraw, September 27, 1993, p. 1. Springwich has supported Metro Mobile's request and has further determined that the federal policy is that competition, not regulation is the preferred marketplace norm. Springwich Cellular Limited Partnership's Comments, October 4, 1993, p. 1. The Resellers have argued that the federal legislation recognizes that states need to continue rate regulation in order to protect consumers if the prevailing conditions of the market fail to do so. Response to Motion of Metro Mobile To Withdraw and Motion to Open New Docket Proceeding in the Alternative, October 8, 1993, p. 1. The Resellers have argued that they have submitted testimony indicating wholesale rates do not reflect prudent costs and that the carriers improperly exercise market control. They further argue that the market is not fully competitive. Id. p. 2. Likewise, the Attorney General disagrees with Metro Mobile and Springwich, that the federal law unconditionally favors deregulation. Rather, states should continue regulation if the prevailing market conditions fail to do so. Letter from Attorney General, October 25, p. 1. The Attorney General supports the motion of the resellers to open a new docket, or, in the alternative to conduct an investigation under the current docket.

At a regular meeting held on December 15, 1993, this matter was considered fully. The Department has reviewed the evidence submitted, the motions and comments of all participants, and the Budget Reconciliation Act of 1993, Pub. L. No. 103-66, §6002, 107 Stat. 379 (1993), (federal legislation). While the federal legislation does preempt the states from regulating cellular rates under normal conditions, it also provides that states may petition to retain regulatory authority if prevailing market conditions fail to protect consumers. The instant docket was reopened to consider whether, pursuant to § 16-250b-2 of the Regulations of Connecticut State Agencies (Conn. Agencies Regs.), the Department should forbear from regulating cellular carriers. The criteria outlined in the regulations set the parameters for this review. Although the Department may, pursuant to Conn. Gen. Stat. §16-250b-2, review the practices of the carriers, such as predatory pricing, the Department has determined that the instant docket is not the appropriate vehicle in which to do so.

continued.....

The Resellers in the October 8, 1993, filing petitioned the Department to initiate a new docket to investigate their claims. Both the AG and the OCC have supported this request. Contrary to the opinion of Metro Mobile and Springwich, the Department has determined that the Resellers have submitted sufficient evidence that market conditions may not be fully protecting consumers to warrant further investigation. The merits of these claims must be fully adjudicated, providing full opportunity for the presentation of testimony and additional evidence. The Department also finds Metro Mobile's and Springwich's arguments that the Department has no authority to conduct the investigation requested by the Resellers to be self-serving. In light of the federal legislation, the Department has not only the right, but an obligation to ensure that the market conditions protect the subscribers. The Department believes that it would not be in the best interest of the consumers for the Department to surrender, at this time, its regulatory control over cellular rates. In order to retain regulatory authority, the Department must submit its request to do so no later than August 1994. The Department concludes that a full investigation of market conditions is warranted and should be commenced immediately to allow sufficient time for the Department to determine whether it should file its request with the federal authorities or surrender its regulatory control upon conclusion of the investigation.

For all of the reasons stated above, Metro Mobile's motion to withdraw the instant docket is hereby granted. Furthermore, the motion to commence a new investigation, filed by the Resellers is also granted.

We hereby direct that notice of the foregoing be given by the Executive Secretary of this Department by forwarding true and correct copies of this document to parties in interest, and due return make.

Dated at New Britain, Connecticut, this 15th day of December, 1993.

Evan W. Woollacott }

Michael J. Kenney } DEPARTMENT OF PUBLIC UTILITY CONTROL

Thomas M. Benedict }

State of Connecticut }

County of Hartford }

ss. New Britain, December 15, 1993

I hereby certify that the foregoing is a true and correct copy of Decision, issued by the Department of Public Utility Control, State of Connecticut.

CERTIFICATE OF SERVICE

I further certify that where a date is inserted by the Department in the "Date Mailed" box below, a copy of the Decision was forwarded by Certified mail to all parties of record in this proceeding on the date indicated.

Date Mailed:

DEC 21 1993

Attest:

Robert J. Murphy
Executive Secretary
Department of Public Utility Control

Southern New England
Telecommunications Corporation
227 Church Street
New Haven, Connecticut 06510
Phone (203) 771-2110



Madelyn M. DeMatteo
*Vice President, General Counsel and
Secretary*

August 12, 1994

Mr. Robert J. Murphy, Executive Secretary
Department of Public Utility Control
One Central Park Plaza
New Britain, Connecticut 0650

Re: Notice of Rate Change and Promotional Offering

Dear Mr. Murphy:

Springwich Cellular Limited Partnership, Inc. ("Springwich") is herein notifying the Department of Public Utility Control that it is reducing its cellular number monthly rate by an average of 35.1 percent per tier. This rate decrease is in response to a recent similar reduction by Springwich's primary competitor and changing market conditions. The effective date of the new rates is August 17, 1994.

Springwich also proposes to offer a service promotion waiving the number activation charge for the period from August 15, 1994 through December 31, 1994, in order to assist the resellers in stimulating new activations.

Springwich is providing advance notice of these changes, including a copy of this correspondence and the revised tariff pages, to all resellers today by facsimile.

Should you have any questions concerning this matter, please call Kathleen A. Carrigan 771-3802.


Sincerely,

A handwritten signature in dark ink, appearing to read "Madelyn M. DeMatteo", with a long horizontal flourish extending to the right.

Robert J. Murphy
August 12, 1994
Page 2

CERTIFICATION

An original and twenty (10) copies of the foregoing have been hand and electronically delivered this August 12, 1994, to Robert J. Murphy, Executive Secretary, Department of Public Utility Control, One Central Park Plaza, New Britain, CT 06051; two (2) copies hand-delivered this August 12, 1994, to John F. Merchant, Office of Consumer Counsel, Suite 501, 136 Main Street, New Britain, CT 06051.


Madelyn M. DeMatteo
Commissioner of the Superior Court